

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LISETTE WILLIAMS,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case No. 3:23-cv-05196-BHS

ORDER DECLINING TO RECUSE
AND REFERRING PLAINTIFF'S
MOTION TO RECUSE

This matter comes before the Court on plaintiff's filing of Motion to Reassign Case in which they request that Magistrate Judge Theresa L. Fricke recuse herself from deciding whether plaintiff's application to proceed *in forma pauperis* (IFP) should be granted for an appeal in this case. Plaintiff argues that Judge Fricke was the presiding Judge in a criminal case where plaintiff was the defendant and has demonstrated bias in this case. Dkt. 4 at 1. Pursuant to 28 U.S.C. § § 144, 455, and United States District Court for the Western District of Washington Local Civil Rule, LCR 3(f), the Court should hold that the undersigned Magistrate Judge is not required to recuse.

On March 10, 2023, plaintiff filed an application to proceed *in forma pauperis* and submitted a complaint; the undersigned reviewed the complaint and ordered, prior to service on the defendants, that plaintiff show cause why the case should not be dismissed without prejudice or, in the alternative, file an amended complaint – in accordance with 28 U.S.C. § 1915(e)(2). Dkt. 3, Order to Show Cause.

1 A judge of the United States shall disqualify herself from a proceeding in which
2 her impartiality “might reasonably be questioned.” 28 U.S.C. § 455(a); *United States v.*
3 *Carey*, 929 F.3d 1092, 1104 (9th Cir. 2019). In addition, a judge of the United States
4 shall disqualify herself under circumstances where she has a personal bias or prejudice
5 concerning a party, or personal knowledge of disputed evidentiary facts concerning the
6 proceeding. 28 U.S.C. § 455(b)(1). Normally, a judge should not be recused when the
7 only basis for the motion to recuse is that the judge made adverse rulings in the case
8 where the party seeks disqualification of the judge. *Liteky v. U.S.*, 510 U.S. 540, 555
9 (1994); *In re Marshall*, 721 F.3d 1032, 1041-1045 (9th Cir. 2013).

10 Pursuant to 28 U.S.C. § 144, a judge shall proceed no further “whenever a party
11 to any proceeding in a district court files a timely and sufficient affidavit that the judge
12 before whom the matter is pending has a personal bias or prejudice either against [the
13 filing party] or in favor of any adverse party.” In addition, 28 U.S.C. § 455 reiterates the
14 “grounds for recusal set forth in § 144 . . . [and] (1) made them applicable to *all* justices,
15 judges, and magistrates (and not just district judges), and (2) placed the obligation to
16 identify the existence of those grounds upon the judge himself, rather than requiring
17 recusal only in response to a party affidavit.” *Liteky*, at 548 (emphasis in original).

18 Under both §144 and § 455, recusal of a federal judge is appropriate for either
19 actual bias or appearance of bias, if “a reasonable person with knowledge of all the
20 facts would conclude that the judge’s impartiality might reasonably be questioned.”
21 *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir.1993). This is an objective
22 test. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1991).

1 United States District Court for the Western District of Washington Local Civil
2 Rule, LCR 3(f) additionally provides that:

3 **(f) Motions to Recuse**

4 Whenever a motion to recuse directed at a judge of this court is filed
5 pursuant to 28 U.S.C. § 144 or 28 U.S.C. § 455, the challenged judge will
6 review the motion papers and decide whether to recuse voluntarily. If the
7 challenged judge decides not to voluntarily recuse, he or she will direct the
8 clerk to refer the motion to the chief judge, or the chief judge's designee. If
9 the motion is directed at the chief judge, or if the chief judge or the chief
10 judge's designee is unavailable, the clerk shall refer it to the active judge
11 with the highest seniority.

12 Courts have held that, generally, personal bias or prejudice under § 144 or § 455
13 must stem from an extrajudicial source. *Liteky*, 510 U.S. at 544 (1994); *U.S. v.*
14 *Hernandez*, 109 F.3d 1450, 1454 (9th Cir. 1997). Thus "judicial rulings alone almost
15 never constitute a valid basis for a bias or partiality motion" because they cannot show
16 reliance upon an extrajudicial source. *Liteky*, at 555. Further, "opinions formed by the
17 judge on the basis of facts introduced or events occurring in the course of the current
18 proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality
19 motion unless they display a deep-seated favoritism or antagonism that would make fair
20 judgment impossible." *Id.*

21 Thus, plaintiff would need to demonstrate bias stemming from an extrajudicial
22 source or a deep-seated favoritism to provide grounds for recusal under § 144 or § 455.
23 See *U.S. v. Sibla*, 624 F.2d 864, 868-869 (9th Cir. 1980) (court should initially determine
24 whether the facts alleged in the affidavit submitted by the party seeking recusal are
25 legally sufficient to support the motion, and refer the motion to another judge to
determine the merits). The two statutes have the same substantive test, but they are not
redundant. *Sibla* at 867-868. There are procedures specified for the parties when filing a

1 motion under §144, but no procedures are set forth in § 455 – that provision is self-
2 enforcing for the judge. *Id.*

3 Plaintiff did not present evidence of any extrajudicial source for the undersigned
4 Magistrate Judge’s alleged bias. Nor does plaintiff allege any facts or instances
5 demonstrating a “deep-seated bias” that would make fair judgment impossible. Further,
6 plaintiff makes conclusory allegations, which “are insufficient to support a claim of bias
7 or prejudice such that recusal is required.” *U.S. v. \$292,888.04 in U.S. Currency*, 54
8 F.3d 564, 566 (9th Cir. 1995) (internal quotations omitted).

9 The undersigned has done nothing that would create the appearance of bias, nor
10 does the undersigned have any reason to be partial to one side or the other in this
11 matter. Due process requires that even if a judge has no actual bias, and “would do
12 their very best to weigh the scales of justice equally between contending parties,” the
13 judge must also satisfy “the appearance of justice.” *In re Murchison*, 349 U.S. 133, 136
14 (1955), *quoting*, *Offutt v. United States*, 348 U.S. 11,13 (1954). In this case, a
15 reasonable person with knowledge of all the facts would not conclude that the judge’s
16 impartiality might reasonably be questioned. *United States v. Carey*, 929 F.3d at 1104.
17 Considering the objective test, the undersigned finds that Ms. Williams’ Motion to
18 Reassign Case is legally insufficient, and because there is no merit to the motion to
19 recuse, the undersigned declines to recuse herself from the referral of this IFP motion
20 by Judge Settle.

21 CONCLUSION

22 There is no reasonable basis for recusal in this instance. In accordance with LCR
23 3(f), plaintiff’s motion shall be referred to the Chief Judge for a determination of its
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1 merits. Accordingly, the undersigned **DECLINES** to recuse voluntarily. Plaintiff's motion
2 for recusal of the undersigned is **REFERRED** to Chief Judge David G. Estudillo for
3 decision and the Clerk of the Court is directed to place the motion for the recusal of the
4 undersigned on Chief Judge Estudillo's motion calendar.

5 The IFP motion currently pending before the Court is hereby **STAYED** pending
6 resolution of the recusal issue. The Clerk of the Court shall send a copy of this Order to
7 plaintiff.

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9 Dated this 8th day of May, 2023.

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13 Theresa L. Fricke
14 United States Magistrate Judge
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